

REMARKS

In the present Amendment, claims 1 and 2 are canceled. New claims 19 and 20 have been added. Support for claim 19 may be found, for example, in original claims 1 and 2. Support for claim 20 may be found, for example, in original claim 2. No new matter has been added, and entry of the Amendment is respectfully requested.

Upon entry of the Amendment, claims 3-20 will be pending. Claims 3-18 are withdrawn from consideration.

The Claims Are Drawn To Patentable Subject Matter Under § 101

At page 2 of the Action, claims 1-2 are rejected as allegedly being unpatentable because organisms *per se* are unpatentable subject matter. Applicants have canceled claims 1 and 2 and presented new claims 19 and 20 as discussed above. New claim 19 recites a “biologically pure culture” as suggested by the Examiner. Because claim 19 recites a “biologically pure culture” in connection with the *Thraustochytrium* strain, it identifies a product that is not found in nature and is thus patentable subject matter. Accordingly, withdrawal of this rejection is respectfully requested.

The Claims Satisfy § 112, second paragraph

At pages 2 and 3 of the Action, claim 2 is rejected under section 112, second paragraph, for indefiniteness.

In claim 2, the recitation of the deposited material was contained in parentheses. The Examiner objected to the use of the parentheses as vague and indefinite. Claim 2 has been canceled, and claim 19 has been added. Claim 19 recites the depository information without

parentheses. Further, Applicants wish to draw the Examiner's attention to the fact that claim 19 does not recite "transferred from FERM P-19159," as the recitation of FERM BP-08568 is sufficient to meet the requirements under MPEP 2403 et seq.

The Examiner seems to have misunderstood the recitation, "a strain of the same genus as the LFF1 strain." While it is true that the LFF1 strain belongs to the genus *Thraustochytrium*, Applicants seek coverage of the LFF1 strain and other strains belonging to the genus *Thraustochytrium* and having all of the identifying characteristics of the strain FERM BP-08568.

The Examiner further objects to the recitation, "a strain having fungological properties substantially identical to those of the LFF1 strain." As noted, Applicants have canceled claims 1 and 2 and added new claims 19 and 20. Claim 20 recites "a strain having all of the identifying characteristics of the strain FERM BP-08568," as suggested by the Examiner.

Reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph are respectfully requested.

Patentability Under 35 U.S.C. § 112, first paragraph

At page 3 of the Action, claim 2 is rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking enablement.

Applicants submit herewith a copy of the deposit certificate from the International Patent Organisms Depository of the National Institute of Advanced Industrial Science and Technology (IPOD) in Tsukuba, Japan. The specification has been amended to indicate that the deposited material has been accepted for deposit under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purpose of Patent Procedure and that all restrictions on the availability to the public of the material so deposited will be irrevocably

removed upon the granting of a patent. The specification has also been amended to identify the deposit (accession) number, date of deposit, name and address of the depository and the complete taxonomic description of the deposited microorganism.

Reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first paragraph are respectfully requested.

Response To Claims Rejection Under 35 U.S.C. § 102(b)

At pages 3 and 4 of the Action, claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by each of “Singh et al (1996) or Singh et al. or Li et al. or Lewis et al. or Iida et al. or Bajpai et al. (1991) or Bajpai (2000).”

By “Singh et al (1996) or Singh et al.,” the Examiner appears to be referring to the two Singh et al documents listed on Applicants’ IDS of October 26, 2004.

The Examiner states that each of the cited documents “discloses a *Thraustochytrium* strain that is capable of producing docosahexaenoic and which at least has fungological properties substantially identical to those of the LFF1 strain if it is not substantially identical to strain LFF1.”

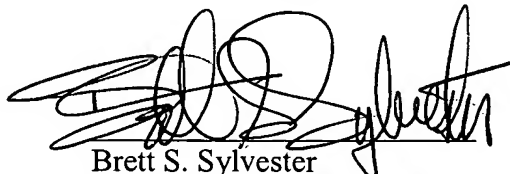
Applicants respectfully submit that the cited references do not disclose a strain that is identical to the deposited LFF1 strain. As discussed, Applicants have canceled claims 1 and 2 and added new claims 19 and 20. Claim 19 recites a biologically pure culture of *Thraustochytrium* strain, deposited as IPOD Accession No. FERM BP-08568, which has an ability of producing docosahexaenoic acid. In other words, claim 19 recites a strain that is identical to the deposited LFF1 strain. Similarly, claim 20 is directed to a biologically pure culture of a strain having all of the identifying characteristics of the strain FERM BP-08568.

In view of the above, reconsideration and withdrawal of the § 102 rejection of claims 1 and 2 are respectfully requested.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brett S. Sylvester', is written over a horizontal line.

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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: February 20, 2007

「特許手続上の微生物の寄託の国際的承認
に関するブタペスト条約」BUDAPEST TREATY OF THE INTERNATIONAL
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURERECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT
issued pursuant to Rule 7.1 by the INTERNATIONAL
DEPOSIT AUTHORITY identified at the bottom of this page.下記国際寄託当局によって規則7.1に従い
発行される。

原寄託についての受託証

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1. 微生物の表示

(寄託者が付した職別のための表示)

LFF1株

(受託番号)

FERM BP- 08568

2. 科学的性質及び分類学上の位置

1欄の微生物には、次の事項を記載した文章が添付されていた。

- ☒ 科学的性質
☒ 分類学上の位置

3. 受領及び受託

本国際寄託当局は、平成14年12月17日(原寄託日)に受領した1欄の微生物を受託する。

4. 移管請求の受領

本国際寄託当局は、平成14年12月17日(原寄託日)に受領した1欄の微生物を受託した。

そして、平成15年12月10日に原寄託によりブタペスト条約に基づく寄託への移管請求を受領した。

(平成14年12月17日に寄託されたFERM P-19159号より移管)

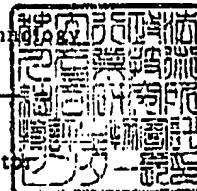
5. 国際寄託当局

名称 独立行政法人産業技術総合研究所 特許生物寄託センター

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平成 15 年 (03) 12 月 10 日